IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31-03-2006

CORAM

THE HONOURABLE MR. JUSTICE P.K. MISRA
AND
THE HONOURABLE MR. JUSTICE R. SUDHAKAR

WRIT PETITION No.36792 of 2004
and
WPMP.NOs. 3545 of 2005 & 115 of 2006

K. Manipillai,
S/o.J. Koilpillai
A.P.97,Anna Nagar, 1st Street,
West Extension, Chennai 600 101. .. Petitioner

Vs.

1. The High Court of Judicature at Madras
   Rep. by its Registrar General,
   High Court,
   Chennai 600 104.

2. The State of Tamilnadu,
   Rep. by Secretary to Government,
   Home (Courts-III),
   Fort St. George, Chennai 600 009. .. Respondents

Petition filed under Article 226 of the Constitution of India for the issuance of writ of Certiorarified Mandamus calling for the records of the first respondent vide ROC.No.2A/2004-Con.B2 dated 24.06.2004 issued to the petitioner and quash the same and direct the respondents to retain the petitioner in service upto 60 years of age.

For Petitioner : Mr.V. Prakash
Senior Advocate for
Mr.P. Chandrasekaran

For Respondents : Mr.V. Raghupathy
Government Pleader
Assisted by
Mrs.V. Velumani, A.G.P.,

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J U D G M E N T

The present writ petition has been filed for issuing a writ of Certiorarified Mandamus to call for the records of the first respondent vide ROC.No.2A/2004 Con.B2 dated 24.06.2004 issued to the petitioner and quash the same and direct the respondents to retain the petitioner in service upto 60 years.

2. The facts giving rise to the present writ petition are required to be noticed in some detail :-

The petitioner joined service as Judicial Magistrate in the year 1980 and served in different places in different capacities and, in course of time, he was promoted as Sub Judge (Civil Judge - Senior Division). While he was functioning as Chief Judicial Magistrate, Ramanathapuram, proceedings dated 24.6.2004, permitting him to retire at the age of superannuation at 58, was served on him. This order is being challenged by the petitioner.

3. The main contention raised in the writ petition is to the effect that during his service, there has been never any doubt about his integrity. It has been further averred in the writ petition that there has been some entry relating to shortfall in reaching the disposal norms, more particularly when he was serving as Subordinate Judge, Gudiyatham. At that stage, he had furnished an explanation indicating that the Subordinate Court, Gudiyatham has been newly constituted with effect from 6.5.1999 and during the period when the shortfall was found, on many days, other works such as Legal literacy and Legal Awareness camp had been conducted and moreover he had availed leave on few days and many matters which had been transferred from the Subordinate Court, Vellore to Subordinate Court, Gudiyatham were not ready for disposal as procedural formalities such as change of vakalaths were yet to take place, and, therefore there was sufficient reason for the petitioner in not reaching the norms, however, he had disposed 4 suits in 12 days. It has been further averred that the decision of the High Court not to extend the services of the petitioner beyond the age of 58 does not meet the standard of objectivity laid down by the Supreme Court in A.I.R. 2002 SC 1752 (ALL INDIA JUDGES ASSOCIATION AND OTHERS v. UNION OF INDIA AND OTHERS). It is also contended that the decision making process of the High Court in such matter is faulty and results in arbitrariness as guidelines have not been evolved by the High Court. It has been specifically contended that the fact that he had failed to reach the norms relating to disposal of cases cannot be the sole ground to decide about the petitioner's continued utility in judicial service.

4. A counter affidavit has been filed on behalf of the first respondent, namely, the High Court, represented by its Registrar General. It is indicated in such counter affidavit that the Full Court of the High

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Court in its meeting dated 28.10.2003 had resolved to adopt the following norms and guidelines to be followed by the Screening Committee while considering the question of extension of service beyond the age of 58. The norms and guidelines are to the following effect :-

> " (1) Confidential Records of the Judicial Officer for the immediate last 5 years.
>
> (2) The statement of Quantum of work turned out by the Officer for the immediate last 5 years.
>
> (3) Medical Certificate from a District Surgeon about physical fitness of the Officer to continue in service upto 60 years.
>
> (4) Leave availed on medical grounds or on any other ground for the immediate last 5 years.
>
> (5) Complaints / petitions against the Judicial Officer in the last 5 years.
>
> (6) Any imposition of penalty against the officer in any departmental inquiry/inquiries against the officer during his service.
>
> (7) Information, if any, regarding general reputation of the Officer."

It has been indicated in the counter affidavit that the above guidelines had been strictly followed while considering the case of the petitioner for continuance in service beyond the age of 58 years. The Screening Committee / Administrative Committee met on 22.3.2004 examined the matter in the light of the guidelines and recommended as follows :-

> "We are of the considered view that there is no continued utility of services of Mr.K. Manipillai, Chief Judicial Magistrate, Ramanathapuram, so as to give him extension beyond the age of 58 years. He shall retire on attaining the age of superannuation of 58 years."

Subsequently, the Full Court of the High Court accepted the recommendation of the Administrative Committee and the petitioner was permitted to superannuate on completion of 58 years on 30.6.2004. Thereafter, the representation dated 30.6.2004 made by the petitioner was also rejected. Further, the Review Petition filed by petitioner was placed before the Full Court, which did not review its earlier conclusion.

5. In course of hearing of the writ petition, the learned counsel appearing for the petitioner has submitted that even though it

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cannot be said that the Judicial Officer has a right to continue in service till the age of 60, in view of the decision of the Supreme Court in AIR 1993 SC 2493 (ALL INDIA JUDGES' ASSOCIATION AND OTHERS v. UNION OF INDIA AND OTHERS) such Judicial Officer should be allowed to continue till 60, unless it is found on an objective assessment that such Judicial Officer is not of any continued utility of services. He has further submitted that, in the present case, the past record of the petitioner does not justify the order of the High Court in not continuing the petitioner in service beyond the age of 58.

6. In A.I.R. 1993 SC 2493 (cited above), while emphasising the direction contained in the main judgment, the Supreme Court observed :-

> " ... There is, however, one aspect we should emphasise here. To what extent the direction contained in the main judgment under review shall stand modified. The benefit of the increase of the retirement age to 60 years shall not be available automatically to all judicial officers irrespective of their past record of service and evidence of their continued utility to the judicial system. The benefit will be available to those who, in the opinion of the respective High Courts, have a potential for continued useful service. It is not intended as a windfall for the indolent, the infirm and those of doubtful integrity, reputation and utility. The potential for continued utility shall be assessed and evaluated by appropriate Committees of Judges of the respective High Courts constituted and headed by the Chief Justices of the High Courts and the evaluation shall be made on the basis of the judicial officers' past record of service, character rolls, quality of judgments and other relevant matters."

7. The matter has been further clarified in (2001) 2 SCC 305 (BISHWANATH PRASAD SINGH v. STATE OF BIHAR AND OTHERS), wherein after considering the different facets, the Hon'ble Supreme Court summed up the conclusions as follows :-

> " 18. We may sum up our conclusions on this aspect as under:
>
> 1. Direction with regard to the enhancement of superannuation age of judicial officers given in All India Judges Assn. v. Union of India does not result in automatic enhancement of the age of superannuation. By force of the judgment a judicial officer does not acquire a right to continue in service up to the extended age of 60 years. It is only a benefit conferred on the judicial officers subject to an evaluation as to their continued utility to the judicial system to be carried out by the respective High Courts before attaining the age of 58 years and formation of an opinion as to their

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potential for their continued useful service. Else the judicial officers retire at the superannuation age appointed in the service rules governing conditions of services of the judicial officers.

2. The direction given in 1993 case is by way of ad hoc arrangement so as to operate in the interregnum, commencing the date of judgment and until an appropriate amendment is made in the service rules by the State Government. Once the service rules governing superannuation age have been amended, the direction ceases to operate.

3. The High Court may, before or after the normal age of superannuation, compulsorily retire a judicial officer subject to formation of an opinion that compulsory retirement in public interest was needed. The decision to compulsorily retire must be in accordance with relevant service rules independent of the exercise for evaluation of judicial officer made pursuant to 1993 case. Recommendation for compulsory retirement shall have to be sent to State Government which would pass and deliver the necessary orders.

4. If the High Court finds a judicial officer not entitled to the benefits of extension in superannuation age he would retire at the age of superannuation appointed by the service rules. No specific order or communication in that regard is called for either by the High Court or by the Governor of the State. Such retirement is not "compulsory retirement" in the sense of its being by way of penalty in disciplinary proceedings or even by way of "compulsory retirement in public interest". No right of the judicial officer is taken away. Where the High Court may choose to make any communication in this regard, it would be better advised not to use therein the expression "compulsory retirement". It creates confusion. It would suffice to communicate, if at all, that the officer concerned, having been found not fit for being given the benefit or extended age of superannuation, would stand retired at the normal age or date of superannuation."

8. The question as to whether the decision of the Administrative Committee approved by the Full Court of the High Court deciding not to extend the age of superannuation of the petitioner is justified or nothas to be examined keeping in view the observations of the Supreme Court in the aforesaid two decisions.

9. Since the main ground raised by the petitioner is to the effect that the Administrative Committee / Full Court was not justified in refusing to extend the age and the matter has not been considered objectively, to satisfy ourselves and more particularly to examine as to

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whether the conclusion of the Administrative Committee / Full Court was not based on any material on record, we have called for the relevant materials on the basis of which the Administrative Committee / Full Court has taken the decision, which is now under challenge.

10. On a perusal of the said records, it is found that between January 1998 and May, 1998, the Portfolio Judge in charge of the District, where the petitioner was posted, had recorded "disposal is poor". Subsequently, there was a remark of the Principal District Judge relating to the overall view to the effect that he was 'average'. Such view was accepted by the Hon'ble Portfolio Judge. During the period between 1.1.2000 to 31.12.2000, it was found that even though the petitioner had decided 12 Original Suits in excess, there was shortfall of 108 in deciding Civil Appeals. Similarly, from 1.1.2001 to 31.12.2001, it was found that there was shortfall of 111 in deciding Civil Appeals. The Portfolio Judge during the period between 1.1.2001 to 31.12.2001 had remarked that the petitioner must improve his disposal in LAOPs, MCOPs, Eps. Subsequently, during the period between 1.1.2002 to 30.4.2002, the Principal District Judge had indicated that the petitioner should reach the norms in deciding the current as well as old cases and such view had been endorsed by the Portfolio Judge. These adverse entries had been communicated to the petitioner. All these materials had been placed before the Administrative Committee and subsequently before the Full Court and only thereafter the impugned proceedings came to be passed. The guidelines and observations of the Apex Court in the matter of evaluation as set in AIR 1993 SC 2493(cited supra) have been followed.

11. On going through the relevant materials, it cannot be said that the recommendation of the Administrative Committee, accepted by the Full Court of the High Court, was not based on any material. There is nothing on record to hold that the decision of the Administrative Committee or the Full Court was arbitrary or that such conclusion was without any basis. All relevant materials have been considered as is borne out by the records. The remarks of the inspecting Judge and the Annual Confidential Report have been taken into consideration. An uniform method is being followed in the matter of evaluation of officers for extension of their service. Therefore, the plea of arbitrariness also does not hold good. In the facts and circumstances of the present case there is no warrant to hold that the decision making process was faulty and would require judicial interference.

12. In course of hearing, learned counsel for the petitioner has submitted that non-extension of service of a Judicial Officer beyond the age of 58 is being considered as a stigma as such persons who retire on attaining the age of 58 are not being considered for re-engagement or re-employment after such retirement. It is therefore submitted by him that principles of natural justice should have been followed while passing any order relating to non-extension.

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13. Law is well settled that an order of compulsory retirement in accordance with service rules is not considered as a punishment or stigma. When compulsory retirement in terms of service rules is not considered as a stigma, it is obvious that retirement of a Judicial Officer on attaining the normal age of superannuation i.e., 58 years, can never be considered as a stigma so as to stand as a bar for considering such an Officer for re-employment / re-engagement in any suitable capacity. A Judicial Officer who retires at the normal age of 58 is obviously eligible for any other suitable engagement / employment after such retirement.

14. In such view of the matter, we do not find any scope to interfere with the impugned proceedings. Subject to the clarification made above, the writ petition is dismissed. No costs.

dpk

Sd/
Asst.Registrar

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Sub Asst.Registrar

To

1. The Registrar General
   The High Court of Judicature at Madras
   High Court,
   Chennai 600 104.

2. The Secretary to the Government of Tamil Nadu
   Home (Courts-III),
   Fort St. George, Chennai 600 009.

+ 1 cc to Mr P.Chandrasekaran, Advocate SR 16044

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MJ(CO)
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JUDGMENT IN
W.P.NO.36792 OF 2004

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